

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 3394 - SB 3222

March 6, 2012

SUMMARY OF BILL: Authorizes the presiding judge of each judicial district to create a veterans court to place veterans and service members charged with misdemeanors and felonies in post-adjudicatory and pre-adjudicatory programs in general sessions or criminal courts. Authorizes veterans from any county within the judicial district to attend a program established within the judicial district. Grants the presiding judge the discretion to designate the veterans court as a separate court, a separate court docket, or a program of a drug court within the judicial district; to operate a veterans court program in one county in the judicial district; and to allow veteran defendants from all counties within the judicial district to participate. Establishes eligibility requirements, participation expectations, sanctions, and possible dispositions for successful completion of the program. Prohibits participation of defendants under certain enumerated circumstances including convictions for specific offenses or unsuccessful past participation in the program. Authorizes a “veterans court team” led by a judicial officer, to request the assistance of a prosecutor, public defender, county mental health liaison, substance abuse liaison, county veterans service officer, probation officer, or a veterans administration social worker to assist with screening candidates and to determine the frequency of progress reviews. Conditions admission into the veterans court program upon the agreement of the prosecutor and the defendant with the approval of the court.

Requires the court to hold a veterans status hearing for any defendant charged with an offense allegedly resulting from post-traumatic stress disorder, traumatic brain injury, substance use disorder, or psychological problems stemming from military service in a combat theater. Requires the court to order the defendant to submit to an eligibility screening and an assessment through the Veterans Administration (VA) or Tennessee Department of Veterans Affairs (Veterans Affairs) to determine the veteran’s status and to submit to a mental health and drug and alcohol screening and assessment by the VA or Veterans Affairs. Specifies that the assessment must include a risk assessment, recommendations for treatment, and be based in part on the availability of treatment resources available to the court. Waives the assessment requirement if a valid screening relating to the pending charge was completed within the previous 60 days.

Authorizes the court, when it determines that the defendant is an eligible veteran, to order the defendant into a local, state, federal, or private nonprofit treatment program as a condition of probation provided the defendant agrees to participate in such a program. Requires the defendant to execute a written agreement with the court including specific terms and conditions of the program and possible sanctions. Requires the court to give preference to treatment programs for which the defendant is eligible through the VA or Veterans Affairs. Requires any substance abuse treatment program providing treatment to a veterans court defendant to be licensed.

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Requires clerks of all general sessions, circuit, criminal, and municipal courts to collect a \$25 fee from any person who enters a guilty plea, enters a no contest plea, is adjudicated at trial, or enters a plea pursuant to any of the diversionary sentencing statutes. Designates the first \$5 to the clerks for an administrative fee with the balance being placed in a designated fund for veterans courts in that county. Requires annual remittance to the Department of Finance and Administration Office of Criminal Justice Programs (OCJP) for any county or judicial district not operating a veterans court program. Authorizes judges who desire to establish a veterans court to apply for funding for training and continuing education on issues relevant to veterans.

ESTIMATED FISCAL IMPACT:

Increase State Revenue – Not Significant/FY12-13

**\$498,800/FY13-14 and Subsequent Years/Veteran Court
Fund**

Increase State Expenditures - \$2,325,000/FY12-13

Net \$1,826,300 /FY13-14 and Subsequent Years

Increase Local Revenue – Not Significant/FY12-13

**\$501,300/FY13-14 and Subsequent Years/Veterans Court
Fund**

Increase Local Expenditures - \$2,325,000/FY12-13/Permissive

Net \$1,823,800 /FY13-14 and Subsequent Years

Assumptions:

- The provisions of the bill authorize the presiding judge in each judicial district to establish a veterans court program. Tennessee has 31 judicial districts covering 95 counties. The presiding judge (also referred to as “chief judge”) has the discretion to operate a veterans court program in one county in the judicial district and allow veterans from the other counties in the district to participate.
- The number of veterans courts that will be formed pursuant to this bill is unknown. This estimate assumes the creation of one veterans court program per district rather than a program in every court within every district. Each veterans court in Tennessee will be established as a specialized court docket or an expansion of an existing drug court or mental health court rather than a completely new court. Fifty percent of the programs will be created in general sessions courts while the remaining fifty percent will be created in state criminal or circuit courts.
- According to the Administrative Office of the Courts (AOC), assuming the jurisdictional and procedural conflicts presented by the bill are resolved, each court will require additional staff and related resources to operate the veterans court program.

- According to the AOC, four mental health courts operate in Tennessee. In one program, the program director indicated the sum of \$100,000 (\$75,000 from OCJP funds + \$25,000 county match) provided initial seed money for the program but did not fully fund the program. This sum funds five percent of the director's salary. The program relies on donations from a local non-profit foundation to assist with photocopies and other needs of the program.
- According to the AOC, another mental health court in Tennessee received a three-year \$1,200,000 federal grant that only covers mental health services. The grant covers no portion of the court's expenses.
- According to the AOC, one established mental health court in Tennessee utilizes, in addition to regular court staff, a program director and two case managers.
- The AOC estimates the salary for each director will total \$50,000 (salary and benefits). In addition, the AOC estimates the cost for two case managers and necessary staff supplies will total \$100,000 (salaries, benefits, computers, and supplies).
- The total increase in state expenditures for court staff (not including the judge, clerks and current staff) will be \$150,000 for each court for minimal operations.
- If one veterans court program is established in each judicial district, the total increase in expenditures will be \$4,650,000 (31 judicial districts x \$150,000).
- Since the estimate assumes one-half of the programs will be established in state courts (circuit and criminal), the total increase in state expenditures will be \$2,325,000.
- The remaining one-half of the programs will be established in general sessions courts, resulting in a total increase in local expenditures of \$2,325,000.
- No additional courts will be added until such time as the fees collected pursuant to this bill are sufficient to fully fund a veterans court docket in a particular state or local court.
- The eligibility screening and assessment, including the mental health and drug and alcohol screening and assessment, will be performed by the VA or by Veterans Affairs.
- A veterans court has no authority to place requirements on the VA.
- According to the Tennessee Department of Veterans Affairs, the requirements placed on the Department by this bill will have no fiscal impact.
- Only defendants who are found eligible by the VA or Veterans Affairs following assessment and who are eligible for VA or Veterans Affairs programs providing treatment for the enumerated mental health issues and substance abuse issues, will be determined to be eligible for veterans court.
- Estimate assumes the services and treatment programs utilized by the VA or Veterans Affairs can be rendered in a manner consistent with the time restrictions of a court program and the court's need to move veterans through the program as expeditiously as possible.
- All costs of treatment for veterans deemed eligible to participate in veterans court, including mental health and substance abuse treatment programs, will be borne by the VA and Veterans Affairs.
- Transportation costs of veterans will either be borne by the veteran court participant or by a VA or Veterans Affairs program. The veterans court program will not be responsible for transportation costs.

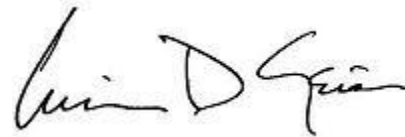
- According to the Department of Mental Health, to the degree it is involved with a veterans court program, it assumes the \$25 fee (less the \$5 clerk administrative fee and any fee deducted by OCJP) collected in criminal cases as specified in the bill can be used and will be used for training needs and any participation by the Department in the assessment performed by Veterans Affairs under contract with the Department.
- The Department of Mental Health will not be responsible for the costs of any mental health or substance abuse treatment program.
- The Department of Finance and Administration, Office of Criminal Justice Programs (OCJP) estimates the \$25 fee assessed in every criminal case (as set out in the bill) may result in collections of \$4,000,000 per year.
- Assuming an indigence rate of 50 percent, total collection will be approximately \$2,000,000.
- However, OCJP acknowledges that collection is uncertain and occurs on a priority basis. Certain costs are paid first from any monies collected from a defendant. Those fees falling farther down the fee priority list are less likely to ever be paid. OCJP indicates the economy also has an impact on the fees actually collected.
- Taking these collectability factors into consideration, the estimate assumes the statewide annual collections will total \$1,000,000.
- Pursuant to Tenn. Code Ann. § 8-21-401, the clerk is entitled to a five percent commission. The recurring increase in local revenue is \$50,000 (\$1,000,000 total collections x 5% commission).
- Assuming all monies will flow through OCJP for distribution to the veterans courts, OCJP will charge a five percent administrative fee. The total increase in state revenue is approximately \$47,500 [(\$1,000,000 total - \$50,000 clerk fee) x 5% OCJP fee].
- Total collections, after deducting fees, will be approximately \$902,500 (\$1,000,000 – \$50,000 - \$47,500).
- Under the provisions of the bill, the clerk will begin to assess the fee upon the effective date of the act at which time veterans court programs will also begin. Funds that are assessed immediately will not be collected immediately, and therefore, not readily available for use by the veterans court. Due to the uncertainty of collections and the simultaneous startup dates, the \$25 fee will not have a significant impact on state or local revenue for veterans court purposes until FY13-14. At that time, the monies collected will help reduce annual state and local expenditures or allow expansion of veterans courts either by being held locally or being forwarded annually to the OCJP Veterans Court Fund.
- Assuming state and local courts will each receive 50 percent of the total remaining revenue, the recurring increase in state revenue is \$451,250 (\$902,500 total x 50%) and the recurring increase in local revenue is \$451,250 (\$902,500 total x 50%) in FY13-14 and subsequent years.
- The total recurring increase in state revenue is \$498,750 (\$451,250 + \$47,500 OCJP fee) in FY13-14 and subsequent years.
- The total recurring increase in local revenue is \$501,250 (\$451,250 + \$50,000 local revenue) in FY13-14 and subsequent years.
- The total net increase in state expenditures is \$1,826,250 (\$2,325,000 total - \$498,750 revenue) in FY13-14 and subsequent years.

- The total net increase in local expenditures is \$1,823,750 (\$2,325,000 total - \$501,250) in FY13-14 and subsequent years.
- As noted above, this estimate assumes the veterans court programs will either be a specialized docket or an expansion of an existing drug or mental health court, as opposed to separate courts. Therefore, the District Attorney General's Conference (DAGC) and District Public Defenders Conference (DPDC) can accommodate the increased workload within existing resources.
- However, if new courts are created, the DAGC will incur additional expenses of \$2,944,354 to \$3,053,105 for staff and related costs to place an additional assistant district attorney in each of the 31 judicial districts. When additional ADA positions are created, additional assistant public defender (APD) positions are created at a ratio of three ADA positions to two APD positions.
- The number of defendants coming into the court system will not increase as a result of this bill. Instead, the defendants who are eligible veterans will be directed to the appropriate VA program to address their underlying issues stemming from service in a combat theater in the United States military. Any increase in the district attorney's duties on these specialized dockets will be not significant.
- Because the veteran court participants would likely qualify for existing pretrial or judicial diversion programs or for alternative sentencing, any fiscal impact on the Department of Correction will be not significant.
- According to the Board of Probation and Parole, the creation of veterans court programs will have a not significant fiscal impact on the Board.
- Any impact on the Comptroller of the Treasury to audit the Veterans Court Fund will be not significant.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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